

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JERVIS B. WEBB COMPANY,

Plaintiff,

v.

CASE NO. 07-10571
HON. LAWRENCE P. ZATKOFF
MAG. VIRGINIA M. MORGAN

THE KENNEDY GROUP, a/k/a
KENNEDY AUTOMATION LIMITED,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on October 10, 2007

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter comes before the Court on Plaintiff's Motion for Entry of Default and Default Judgment and to Dismiss Counterclaims and Release Bond. Defendant has responded, and Plaintiff has replied to Defendant. For the reasons set forth below, Plaintiff's Motion will be DENIED.

II. BACKGROUND

On August 23, 2007, this Court authorized the withdrawal of Defendant's counsel and mandated that new counsel be retained by September 4, 2007. Defendant did not obtain new counsel until September 20, 2007, in part because negotiations with one attorney dissolved. While pursuing counsel, Defendant failed to satisfy dates for depositions, answers to interrogatories, and answers to requests for admission. Plaintiff did not bring a motion to compel discovery but instead filed this Motion for Entry of Default and Default Judgment, alleging that Defendant had notice that its

counsel sought withdrawal dating back to June 8, 2007, and that Defendant has “completely failed to defend itself in this action.” As a corollary to the Motion for Entry of Default, Plaintiff seeks to Dismiss Defendant’s Counterclaims and to Release Bond.

New counsel for Defendant has replied and argues that Plaintiff suffers no prejudice by allowing Defendant to bring all discovery responses up to date. As of the filing of the present motion, the final pretrial conference was set for May 15, 2008, and discovery was to remain open until December 5, 2007.

III. ANALYSIS & OPINION

Courts enjoy the discretion to enter a judgment of default upon application to the court by the party entitled to the judgment. FED. R. CIV. P. 55; *Epicentre Strategic Corp. v. Cleveland Constr., Inc.*, No. 04-40278, 2007 U.S. Dist. LEXIS 15971, at * 14–15 (E.D. Mich. Mar. 7, 2007) (internal quotation omitted). A default judgment “is a drastic step which should be resorted to only in the most extreme cases.” *United Coin Meter Co. v. Seaboard C. R.R.*, 705 F.2d 839 (6th Cir. 1983). A party may avoid the entry of default if it demonstrates that it “intends to defend the suit.” *Lutomski v. Panther Valley Coin Exch.*, 653 F.2d 270, 271 (6th Cir. 1981) (internal quotation omitted). In making this determination, “courts now look beyond the presence or absence of [] formal actions to examine other evidence of active representation.” *Id.*

Defendant’s failure to attend depositions and answer interrogatories and requests for admission stems not from deliberate defiance but from a lack of representation. Plaintiff argues that because Defendant obtained new counsel outside the time constraint imposed by this Court, entry of default is warranted. Such a “drastic” step, however, is inappropriate in this case. Defendant’s tardiness does not amount to behavior so extreme as to warrant the default judgment, the dismissal

of counterclaims, or the release of bond.

V. CONCLUSION

Based on the foregoing,

IT IS ORDERED that Plaintiff's Motion for Entry of Default and Default Judgment and to Dismiss Kennedy's Counterclaims and to Release Bond is DENIED.

IT IS FURTHER ORDERED that Defendant be permitted to bring all outstanding discovery requests up to date by October 31, 2007. Pursuant to and in accordance with this Order, Defendant's Motion for Permission to File Answers to Requests for Admission is GRANTED.

IT IS FURTHER ORDERED that discovery be extended until January 4, 2008.

IT IS FURTHER ORDERED that no extensions will be granted with respect to the final pretrial conference.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: October 10, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 10, 2007.

s/Marie E. Verlinde

Case Manager

(810) 984-3290